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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,783	04/14/2004	Lydia Luckevich	0014-0201PUS2	4727

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BIRCH STEWART KOLASCH & BIRCH  
PO BOX 747  
FALLS CHURCH, VA 22040-0747

EXAMINER
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CROUSE, BRETT ALAN

ART UNIT	PAPER NUMBER
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1794

NOTIFICATION DATE	DELIVERY MODE
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01/28/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	Application No. 10/823,783	Applicant(s) LUCKEVICH ET AL.	
	Examiner Brett A. Crouse	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-15,17-27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-15,17-27 and 29-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This office action is in response to the amendment, filed 16 October 2007, which cancels claims 6 and 16, and amends claims 24 and 37. Claims 1-5, 7-15, 17-27, and 29-38 are pending.

#### ***Response to Amendment***

The objection to claims 6 and 16 is overcome by the amendment, filed 16 October 2007, due to cancellation of claims 6 and 16.

The rejection of claim 37 under 35 U.S.C. 112, second paragraph, is overcome by the amendment, filed 16 October 2007.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 8-11, 13-15, 17-19, 21, 22, 24-27, and 36-38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343, for reasons of record in the office action, mailed 16 April 2007.

Claims 1, 8, 17, 20, 21, 37 and 38 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kennedy-Skipton, US 4,114,384, for reasons of record in the office action, mailed 16 April 2007.

Art Unit: 1794

Claims 7 and 29-34 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further in view of Hashimoto et al., US 4,174,230, for reasons of record in the office action, mailed 16 April 2007.

Claims 23 and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further in view of Morris et al., US 5,482,551, for reasons of record in the office action, mailed 16 April 2007.

Claim 12 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey et al., US 2,571,343 as applied to claims 1-6, 8-11, 13-19, 21, 22, 24-27, and 36-38 above, and further in view of Tanei et al., US 4,301,356, for reasons of record in the office action, mailed 16 April 2007.

### ***Response to Arguments***

Applicant's arguments filed 16 October 2007 have been fully considered but they are not persuasive.

With respect to the rejections in which Dailey et al., US 2,571,343 is used alone or as the primary reference applicant argues that Dailey fails to teach or suggest the instant invention because;

1) the instant invention is concerned with an un-set gypsum paste and this differs from the product of Dailey;

Art Unit: 1794

2) the instant invention does not use a curable resin as in Dailey and instead uses a rheology modifier;

3) Dailey does not form a product substantially free of macro defects due to the use of a rheology modifier in the instant invention which enables the formation of a product substantially free of macrodefects;

4) the material of Dailey would not possess the self supporting property as claimed in the instant invention.

As to points 1, 2, and 3:

The claims of the instant invention are directed to a product formed from a paste (composition) said paste (composition) comprising the recited elements. Dailey teaches the recited elements gypsum, a stoichiometric amount of water, a binder resin, and the use of additional fillers and reinforcing agents including clay. The product of Dailey lacks interstitial voids (defects). The resulting product of both the composition of Dailey and the composition of the instant invention comprise equivalent elements.

As to point 4:

Dailey teaches both a heavy mix when uncured and that the product of the composition of Dailey is a “dense, hard and tough casting” when cured.

With respect to the rejection over Kennedy-Skipton, applicant argues that Kennedy-Skipton does not teach or suggest the self-supporting properties of the material as evidenced by the pumpability of the formulation of Kennedy-Skipton. The examiner respectfully disagrees,

Art Unit: 1794

Kennedy-Skipton teaches that their composition will remain in place in a vertical borehole, thus indicating the product is self-supporting.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brett A. Crouse whose telephone number is 571-272-6494. The examiner can normally be reached on Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrell H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BAC/ 12 January 2008

 1/20/08

**Ms. Arti R. Singh**  
Primary Examiner  
Tech Center 1700